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U.S. Marine Corps

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BATTLEFIELD REFUGEES

A Thesis

Presented To

The Judge Advocate General's School, U. S. Army

The opinions and conclusions expressed herein are those of the individual student author and do not necessarily represent the views of either The Judge Advocate General's School, U. S. Army, or any other governmental agency. References to this study should include the foregoing statement.

by

Captain James Patrick Shannon, 020461

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## CHAPTER I

### INTRODUCTION

Within the community of nations there are particular interactions between people and events which ought to be considered the proper subject-matter for international law. During this Century, the refugee and his concomitant legal problems have been treated as a proper concern of the international community. The refugee has been defined, analyzed and treated by international law. National attitudes towards the plight of the refugee have changed, and in some instances there has been improvements. Nonetheless, the increase in the numbers of refugees in this century has far outpaced any treatments applied thereto. War, in most cases has fathered the refugee. Some wars have caused people to seek refuge without the boundaries of the state in which the conflict occurs. There are other wars, in which, uprooted and displaced by the battles, the people nevertheless remain within the boundaries of the state. They seek refuge within the state where the conflict occurs. There are many aspects to the problems of the war refugee. There



are humanitarian, social, economic, legal, and political considerations. The emphasis throughout this work is on the legal aspects and considerations. Legal rules, however, do not exist in a vacuum. Their purpose is to regulate situations and provide solutions to problems confronting man. Refugees, as a concept, shall be examined in the light of international values and goals. The standard hereinafter employed to aid in discerning international goals and trends shall be the definition of refugee found in important international agreements. These definitions shall be examined to discover whether they are in fact achieving the goals sought.





## CHAPTER II

### HISTORICAL BACKGROUND

#### A. GENERAL

In customary international law<sup>1</sup> there is not a generally accepted definition of the term "refugee." However, one ought not infer that the refugee is not a proper subject of international law.<sup>2</sup> Refugees have been inextricably involved in, and affected by the modern development of international law. Nevertheless, it is unwarranted to discuss the refugee in an abstract juridical sense. The concept of the status of the refugee must be examined only within the context of a particular legal instrument. In this regard one must understand

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<sup>1</sup>Customary international law refers to international custom in the sense of a general practice accepted as law. See I. C. J. Stat. art. 38 para 1.(b).

<sup>2</sup>For the position of individuals as proper subjects of international law, see Lauterpacht, "The Subjects of the Law of Nations," 63 L. Q. Rev. 438 (1947). Cf. The Mavrommates Palestine Concessions, P. C. I. J. ser. A, No. 2 (1924), wherein the court stated that by taking up the case of one of its subjects and by resorting to international judicial





that any international legal agreement,<sup>3</sup> relating to the refugee, is merely a response to a particular and real social condition affecting the refugee. These conditions existed prior to and at the time of any international agreement relating to the refugee. For the proper and complete understanding of a particular refugee situation, and the international approach thereto, it is essential that the underlying factual situation be revealed. We must know why certain legal efforts on behalf of the refugee were undertaken by the international community.

#### B. THE RUSSIAN REVOLUTION REFUGEE

The first major effort to assist the refugee through international law was a direct result of the Soviet Revolution of 1917.<sup>4</sup> The nations of the

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<sup>2</sup>(Continued) proceedings, a State is in reality asserting its own right, the right to ensure respect for the rules of international law.

<sup>3</sup>International conventions are known under different names, of which "convention", "treaty", "agreement" and "protocol" are the most extensively employed. The term "convention" is often applied to a multilateral instruments of some importance, "treaty" to a bilateral or regional instrument of some importance, whereas the terms "agreement" and "protocol" are frequently used to describe instruments of lesser consequence. The terms are used interchangeably herein.

<sup>4</sup>Simpson, The Refugee Problem 75 (1939).

The first major effort to make the radio-  
new therapy instrumental has been a direct result of  
the Soviet Revolution of 1917.<sup>1</sup> The outbreak of the

<sup>2</sup>It should be understood, a state is in reality partaking its own light, the light to which reason refers for the rules of immaterial law.

1. The word "communist" is used in a very broad sense to include all persons who are active in the work of the Communist Party, whether or not they are members of the Party. This includes all persons who are active in the work of the Party, whether or not they are members of the Party.



world were witness to the advent of a new social force in Russia. As a result of this revolution nearly one and a half million Russian people became refugees and departed Russia.<sup>5</sup> In an effort to lessen the plight of these Russian refugees, large sums of money were expended by some European governments and private charitable organizations. These measures, however, were temporary emergency expenditures.<sup>6</sup> The response to the refugee situation by the international community was based on the assumption that a successful counter-revolution was inevitable in Russia. It was believed that this event would dissipate the refugee problem by facilitating the return of the refugees to their former homes in Russia.

For the most part, aid was rendered to the refugee only if he were outside of Russia. The problem of the most critical importance to the refugee concerned the lack of proper identity and travel documents. These papers were essential to the free movement of the refugee. The absence of the aforesaid documents constituted the severest burden under

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<sup>5</sup>Id.

<sup>6</sup>Macartney, Refugees--The Work of the League 19 (1930).

1. The first of these is the fact that the Government of the United States has been unable to secure the cooperation of the Government of the Soviet Union in the investigation of the activities of the Soviet agents in the United States. This is due to the fact that the Soviet Government has refused to provide the United States with the necessary information and documents for the purpose of the investigation.



which the refugee labored. As a result the refugees were immobilized within the countries in which they found themselves.<sup>7</sup>

#### C. THE HIGH COMMISSIONER FOR REFUGEES

When it was realized by the world community that the refugee would not be returning to Russia, many of the states with refugees looked to the League of Nations for guidance. The Joint Committee of the International Committee of the Red Cross, in February 1921, invited the League of Nations to appoint a High Commissioner to define the status of refugees, and among other things, to coordinate measures for the assistance of refugees.<sup>8</sup> Fridtjof Nansen of Norway was thereafter appointed High Commissioner by the League of Nations. It is generally agreed that no other man would have had the same influence and authority with governments and charitable organizations.<sup>9</sup> Although there was no direct stipulation

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<sup>7</sup>Id. at 20.

<sup>8</sup>Id. at 199. On 27 June 1921, the Council convoked a Conference on the Question of Russian Refugees. In addition, the Council authorized the appointment of a High Commissioner for Refugees. 13 L. N. C. M. 53 (1921). See also 12 L. N. C. M. 19 (1920).

<sup>9</sup>Simpson, supra note 4, at 200.



regarding refugees contained in the League Covenant, because of the importance attached to the mission of the Office of the High Commissioner, it was made responsible directly to the League Council.<sup>10</sup>

The principal responsibilities of the new High Commissioner, as defined by the League of Nations, were to coordinate the actions of governments and private organizations for the relief of Russian refugees; to regulate the legal status of the refugees; and to assist in locating permanent homes.<sup>11</sup> The enormity of the problem became apparent only after a census disclosed the large number of Russians who were refugees. The High Commissioner recognized that the treatment accorded to each group of refugees by the authorities in the several European countries substantially differed from one area to another.<sup>12</sup> The High Commissioner, however, had not been provided with any funds for expenses other than administrative

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<sup>10</sup>Cf. League of Nations Covenant, art. 23, which provided that members of the League will endeavor to secure and maintain fair and humane conditions of labor for men and to that end will establish and maintain the necessary international organizations.

<sup>11</sup>Thompson, *Refugees* 19 (1938).

<sup>12</sup>Simpson, *supra* note 4, at 200.



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<sup>14</sup> *Journal of the American Medical Association*, 282 (2000): 1033-1034.

As this Committee has been established, it is necessary to consider the following questions:

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10. The Bureau of Census has been advised that the Bureau will continue to receive and maintain this and future information as it is received and will not be held in any way.

costs.<sup>13</sup> Thus, when the High Commissioner sought additional funds, he encountered the prevailing attitude that it was not the business of the High Commissioner to finance Russian refugees.<sup>14</sup> As a result of the League's action, the High Commissioner was limited to calling for an inter-governmental conference to convene at Geneva for the purpose of considering a proposal to issue identity certificates to the refugees.<sup>15</sup>

#### D. THE NANSSEN PASSPORT

These were the circumstances surrounding the first occasion of the Twentieth Century when the refugee was made the subject-matter of a written international agreement. In 1922, several nations<sup>16</sup> entered into an agreement entitled "Arrangement with Regard to the Issue of Certificates of Identity to

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<sup>13</sup>The initial allocation to the High Commissioner was \$20,000.00. L. N. Doc. No. A/L/35, Minutes of the Fourth Committee of the Second Assembly, Annex 23, 305.

<sup>14</sup>Macartney, supra note 6, at 29.

<sup>15</sup>L. N. Doc. No. CRR 30/1 (1922).

<sup>16</sup>Subsequently, the "Nansen passport" was accepted in principle by fifty-three states. L. N. Doc. No. CL 79/E (1922).



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Russian Refugees."<sup>17</sup> Of singular and noteworthy importance was the absence therein of any definition for the term "refugee." By the terms thereof, a certificate of identity could be issued, by the High Commissioner, to a refugee of Russian origin who had not acquired a new nationality. The agreement merely refers to the concept of a "refugee" who was of "Russian origin." The vagueness of the definition enabled the High Commissioner to freely confer refugee status.

The successes of the High Commissioner did not, however, deal directly with the problems of eliminating the refugee. Of course, there was the apparent solution of repatriation. The League of Nations agreed with the High Commissioner that repatriation ought to be wholly voluntary, and that if refugees were to be sent back to the Soviet Union, then the Soviet Government would have to undertake certain minimal guarantees of fair treatment.<sup>18</sup> Thereafter, the High Commissioner sought and obtained a promise of amnesty and a guarantee of fair treatment for all refugees who should desire to return to the Soviet

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<sup>17</sup>13 L. N. T. S. 237 (1921).

<sup>18</sup>Macartney, supra note 6, at 31.



Union.<sup>19</sup> These negotiations were directly between the High Commissioner and the Soviet Union.<sup>20</sup> Thus, it may be seen that the High Commissioner established rights for refugees who might desire to return to their former country. For those refugees who did not desire to return to the Soviet, the High Commissioner, with the aid of private organizations, assisted the integration of at least 800,000 refugees into the economies of France and Germany. Those refugees not otherwise resettled were dispersed into forty-five countries by the herculean efforts of the High Commissioner.<sup>21</sup> While some progress was being made in the reduction of the number of refugees, it must be noted that even the High Commissioner was of the opinion that the problem was transitory in nature;<sup>22</sup>

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<sup>19</sup>Stoessinger, *The Refugee and the World Community* 19 (1956).

<sup>20</sup>Id.

<sup>21</sup>Holborn, *The League of Nations and the Refugee Problem*, *Annals of the American Academy of Political and Social Science*, 126 (1939). In most instances, the refugees who were resettled were prohibited from the practice of their professions and former occupations. The employment opportunities available to the refugee mainly fell into the category of manual labor. One exception to the general rule of treatment was made in Czechoslovakia where a Russian University was established at the expense of the government. Macartney, supra note 6, at 47.

<sup>22</sup>League Council, *Minutes of the Fourth Committee Official Journal*, Sp. Supp. No. 27, 49 (1924).







and that its end was merely a matter of awaiting the passage of time. Nonetheless, prior to the completion of efforts on behalf of the Russians, another stark challenge arose.

#### E. THE ARMENIAN REFUGEE

During World War I, Armenians served on the side of the Allied powers with the expectation of obtaining national independence from Turkey. Turkey was a member of the Central Powers. In 1920, the victorious powers recognized a de facto independent Armenian government. Armenia was also a signatory to the Treaty of Sevres, under which, Turkey was compelled to recognize an independent Armenia. In 1922, Turkey, notwithstanding the provisions of the Treaty of Sevres, invaded Armenia.<sup>23</sup> Armenia sought direct aid from the League of Nations. The League, in response to the situation, passed a resolution which expressed both the concern of the League and the League's desire that some state should intervene with a view toward terminating the Turkey-Armenian hostilities.<sup>24</sup> Two causes are assigned to the creation

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<sup>23</sup>Stoessinger, supra note 21, at 23.

<sup>24</sup>League of Nations Off. J., 2nd Ass. 5 (1920).

(1980) 2 vols. Int. J. G. 1970-1979. Summary

of the resulting refugee population; (a), the occupation of Armenian territory by the Army of Turkey and (b), cession of a section of Armenia to Turkish sovereignty.<sup>25</sup> The Council of the League of Nations in 1924, authorized the High Commissioner to extend the benefits of its services to the Armenian refugee who was no longer within Armenia. In addition, members of the League of Nations entered into an international agreement entitled the "Plan for the Issue of a Certificate of Identity to Armenian Refugees of 31 May 1924."<sup>26</sup> This agreement defined Armenian refugees as persons of Armenian origin, who are not Russian refugees within the meaning of the arrangement concluded at Geneva on 5 July 1922.<sup>27</sup> The absence of a specific definition continued the vagueness of the prior arrangement. The inference is that the problems associated with the Armenian

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<sup>25</sup>Stoessinger, supra note 21, at 24.

<sup>26</sup>L. N. Doc. C. L. 72(a) (1924).

<sup>27</sup>These two instruments were supplemented and amended by the Arrangement relating to the Issue of Identity certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements. 89 L. N. T. S. 47 (1926).





refugee were considered to be transient in nature. The fact that the members could not agree to other than a plan gives rise to the inference that a more realistic attitude toward the refugee was emerging. The generality of the reference to the refugee within the plan allowed for additional time for the participating members to re-evaluate their entire approach to the problem. The Armenian refugees were displaced throughout Asia and Europe.<sup>28</sup> In 1926, realizing the lack of progress toward any solution of the situation, and in an effort to ameliorate the position of the refugees, an Intergovernmental Conference on Refugee Questions was convened at Geneva. As a result of this conference, an agreement was entered into by the participants which extended the "Nansen passport" to the Armenian refugee.<sup>29</sup>

#### P. THE REFUGEE DEFINED

As a result of the 1926 Conference at Geneva, there were two definitions agreed upon by

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<sup>28</sup>Holborn, supra note 23, at 127.

<sup>29</sup>See note 26 supra.



the international community. The definition in the case of the Russian refugee, was: "Any person of Russian Origin who does not enjoy or . . . no longer enjoys the protection of the Government of [Russia] and who has not acquired any other nationality."<sup>30</sup> This definition was selected and adopted by the Conference with the understanding that the text would not be construed to deprive those children of Russian refugees who were born abroad of the benefits of the international refugee system.<sup>31</sup> In the context of the then existing situation it is to be noted that most Russian refugees were stateless persons as a result of Soviet legislation which vitiated their citizenship.<sup>32</sup> The legislation was repealed in 1938 although statelessness of the refugee was continued by the Soviet Union.<sup>33</sup> Thus,

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<sup>30</sup>89 L. N. T. S. 47.

<sup>31</sup>L. N. Doc. R./I. C. C. No. 10, 5 (1926).

<sup>32</sup>Cf. Russian Socialist Federative Soviet Republic Law of 15 Dec. 1921; U.S.S.R. Ordinances regarding Union Citizenship of 29 October 1924; Union Citizenship Law of 13 November 1925, Flournoy and Hudson, A Collection of Nationality Laws of Various Countries, 511-15 (1929).

<sup>33</sup>Soviet Citizenship Law of 19 August 1938. U. N. Publ. St./Leg./Ser. B/4 462.





it may be seen that a prerequisite for international assistance was the absence of any effective state assistance. Certainly, the Soviet Union would not render aid and assistance to any of those people from whom Russian citizenship had been removed. In addition thereto, the refugee who was to be rendered assistance by international law must not enjoy the prospect of receiving assistance from any state government. Any benefits which were to be conferred, would not be conferred upon a citizen of a state. This approach was necessarily a response to the attitudes of state governments themselves.

The Armenian refugee under the 1926 Arrangement was defined as: "Any person of Armenian origin, formerly a subject of the Ottoman Empire, who does not enjoy or no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired any other nationality."<sup>34</sup> A significant difference from the Russian refugee definition is the inference of the non-refugee status of children born outside the Ottoman Empire. It is illogical

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<sup>34</sup>89 L. N. T. S. 47.

It was not until a preliminary study of the literature  
 revealed the limitations of the existing data  
 available, however, that the need for a more  
 complete and systematic study of the  
 problem was apparent. The study was  
 designed to determine the extent of the  
 problem, to identify the factors  
 influencing its development, and to  
 suggest methods for its control.  
 The study was conducted in three  
 phases. The first phase was a  
 preliminary study of the literature  
 to determine the extent of the  
 problem. The second phase was a  
 study of the factors influencing  
 the development of the problem.  
 The third phase was a study of  
 methods for the control of the  
 problem. The results of the study  
 are presented in the following  
 chapters.

to conceive of children who were born abroad conforming to the requirement that the refugee be formerly a subject of the Empire. The inference being that the treaty drafters were of the opinion that repatriation in the case of the Armenian refugee might not be the best solution for the settlement of the problem. The drafters were no longer oriented toward re-establishing and securing contacts with the refugee's former state of residence. Another distinction to be considered in the analysis of these two international definitions is that the Armenian refugees were not per se deprived of their citizenship through discriminatory class legislation. The Turkish authorities had the power through special legislation to deprive these Ottoman subjects of their Turkish citizenship who did not take part in the national independence movement and who remained outside Turkey after 24 July 1923.<sup>35</sup> This legislative authorization was not self-executing and required considerable administrative action.

#### G. PRE-WORLD WAR II REFUGEE

The next significant international

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<sup>35</sup>U. N. Publ. St./Leg./Ser. B/4 459.

[illegible]



event<sup>36</sup> which concerned the refugee occurred in 1933. As a result of international agreement, there was the Convention relating to the International Status of Refugees of 28 October 1933.<sup>37</sup> This Convention provided no new definition of "refugee" and there was no recognition of any new special class or categories of people to be included therein. Article I, of the aforesaid Convention, stated that the Convention was applicable only to Russian and Armenian refugees subject to such modification and amplification as each Contracting Party introduced into that definition at the moment of signature or accession. The significance of this Convention is apparent only after an examination of the world

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<sup>36</sup>In 1926, in Bulgaria, there had been a loss of territory through diplomacy and as a result thereof many people were displaced. The refugees had fled into the remaining territory of Bulgaria. There was international hostility towards rendering any international aid when Bulgaria applied to the League of Nations for assistance. The members of the League feared that any money expended by the League might inure to the benefit of military aggression by Bulgaria. Simpson, supra note 4, at 22. However, after a new government came into power in Bulgaria and proclaimed a political amnesty for political refugees, there was a change in international attitudes and thereafter assistance was rendered. Id. at 24.

<sup>37</sup>159 L. N. T. S. 199.

year<sup>11</sup> when the Commission was created in 1941. It is a result of international movements, which was the Commission's mission in the International Division of the League of Nations. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it.

In 1941, the Commission was created in 1941. It is a result of international movements, which was the Commission's mission in the International Division of the League of Nations. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it. The Commission was created in 1941, and its mission was to study the situation of the world and to report on it.

The Commission was created in 1941.

situation and the problems to which the Convention relates.

It was at this time in the world community that the political philosophy of Facism appeared in Europe. Italy expelled nearly one million opponents of Mussolini's government. The majority of these refugees found their way to France.<sup>38</sup> In addition, a burden was cast upon France when nearly one-half million Spanish Loyalists sought refuge from Spain's newly established government.<sup>39</sup> The problems connected with the Spanish and Italian refugees were not considered to be properly within the province of the League of Nations.<sup>40</sup> The League, at this time, was dealing with problems which were by their very nature bound to arouse the hostility of actual or potential members of the League. It is to be noted that the earlier attitude of regarding the refugee problem as transitory had been altered. The international community was now regarding the

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<sup>38</sup>Stoessinger, supra note 21, at 31.

<sup>39</sup>Id.

<sup>40</sup>Macartney, supra note 6, at 63.



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problem as insoluble in the context of the then world situation. Political considerations were curtailing international efforts into solving the problems associated with the refugee. Refugees were becoming more of a world problem than had been the case in earlier years.

It was 1933 that the problem of Jewish refugees from Germany was brought to the official attention of the League of Nations. The problems associated with the Jewish refugee grew out of the resulting imbalances created by the influx of refugees into the European labor market from Germany. Germany was a member of the League of Nations. In response to the crisis, the League established a "High Commissioner for Refugees Coming from Germany." It was a mere token action, however, since no funds were to be provided. All funds for administrative and operational expenses would have to come from non-League sources.<sup>41</sup> This separate agency continued until 1938, when it was finally acknowledged that the agency had been ineffective.<sup>42</sup> The world

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<sup>41</sup>L. N. Doc. No. A/14 1 (1934).

<sup>42</sup>Holborn, supra note 23, at 134.



situation was soon to alter radically the treatment of refugees. The failure of the League to treat the political causes creating refugees may have contributed to the circumstances which promoted the Second World War.

Analysis of the situation with the new and existing  
and level of supply and demand for the various  
services and the necessary additional facilities  
to the development of the country and the people.

1958

1. The first step is to identify the main problems.

2. The second step is to identify the main causes.

3. The third step is to identify the main effects.

4. The fourth step is to identify the main solutions.

5. The fifth step is to identify the main results.

6. The sixth step is to identify the main conclusions.

7. The seventh step is to identify the main recommendations.

8. The eighth step is to identify the main findings.

9. The ninth step is to identify the main suggestions.

10. The tenth step is to identify the main conclusions.

11. The eleventh step is to identify the main recommendations.

12. The twelfth step is to identify the main findings.

13. The thirteenth step is to identify the main suggestions.

14. The fourteenth step is to identify the main conclusions.

15. The fifteenth step is to identify the main recommendations.

16. The sixteenth step is to identify the main findings.

17. The seventeenth step is to identify the main suggestions.

18. The eighteenth step is to identify the main conclusions.

19. The nineteenth step is to identify the main recommendations.

20. The twentieth step is to identify the main findings.



### CHAPTER III

#### POST-WORLD WAR II

##### A. THE UNITED NATIONS

After World War II the refugee question appeared as an item on the agenda of the First Session of the General Assembly of the United Nations.<sup>43</sup> At that time, there were approximately one million refugees recognized qua refugees.<sup>44</sup> The debate among the membership dealt primarily with two questions--whether the problem of the refugee was a matter properly within the cognizance of the international community, and if it were, whether repatriation was a desirable goal in solving the problem.<sup>45</sup>

On the one side of the debate, several member-states advocated a strictly nationalistic approach. These forces contended that the approach to the problem by the League of Nations, in effect,

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<sup>43</sup>U. N. Doc. E. Ref. 1 (1946); See also U. N. Doc. A/45 (1946).

<sup>44</sup>U. N. Doc. E/Ref. 1 (1946).

<sup>45</sup>Stoessinger, supra note 21, at 62.

THE UNITED STATES

12 JAN 1968

A. THE UNITED STATES

After World War II the United States

appeared as an actor on the world stage.

History of the United States: The United

States. At that time, there were approximately

one million refugees worldwide and refugees.

The United States was the only country that

with the government—without the presence of the

refugees was a major problem with the presence

of the international community, and it was

whether refugees was a problem in the

and the world.

On the one side of the United States

states presented a variety of national

These factors were the reason for the

presence of the United States, as well.

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U.S. A. 100, 1 (1967). See also U.S.  
Doc. 100 (1967).

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U.S. A. 100, 1 (1967).

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U.S. A. 100, 1 (1967).

lengthened the period of time that a person suffered the burdens of a refugee. These states advocated that the problems of the treatment of refugees were the problems of the states wherein the refugees were located. On the other side of the international debate, the response to the problem was in the nature of an humanitarian appeal. These nations contended that in the absence of international action, the refugees would receive no assistance.<sup>46</sup> The discussion of the question of repatriation caused a more serious clash between the opposing states. To resolve this conflict the matter was submitted to a committee appointed by the General Assembly. The Committee formulated a resolution which was no more than a general statement of policy: ". . . the main task concerning displaced persons [is to] encourage and assist . . . their early return to their countries of origin."<sup>47</sup> This simple policy statement did not refer to the issue of voluntariness. This produced results unforeseen by some of the member

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<sup>46</sup> Id. at 5.

<sup>47</sup> U. N. Doc. E/15, Annex A 14 (1946).





states. Thereafter, the Committee submitted another resolution which was adopted by the General Assembly. The latter resolution set forth the explicit statement of principle that repatriation of the refugee must be in accord with the desires of the individual refugee:

No refugees . . . who have finally and definitely, in complete freedom, and after receiving full knowledge of the facts including adequate information from the governments of their countries of origin, expressed valid objections to returning to their countries of origin, and who do not fall in the category of criminals . . . shall be compelled to return to their country of origin.<sup>48</sup>

#### B. THE INTERNATIONAL REFUGEE ORGANIZATION

The winds of change produced a new concept regarding the refugees. The problems were no longer to be considered only as a clash between an individual and a state. As a result of the efforts of the United Nations, the international concept of a refugee was enlarged. Eligibility for aid and assistance under the Constitution of the International Refugee Organization of 15 December 1946<sup>49</sup> was conceived in

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<sup>48</sup>Id.

<sup>49</sup>18 U. N. T. S. 3 (1946). Article 2(1) of the Constitution provides, in part: "The functions of the Organization to be carried out in accordance

... shall be required to return to their  
 country of origin if they are not in the category of persons  
 determined to be of interest to the United States, and  
 unless they are determined to be of interest to the United States  
 shall be required to return to their country of origin.

of the Commission to be given out in accordance  
the Commission provides, in part: "The Commission  
is a U. S. C. 11740. Article 211 of

terms of general categories of people<sup>50</sup> rather than limited groups.

Commencing with the consideration of the refugee problem in the League of Nations, governments had consistently attempted to treat the problems of the refugee within rather narrowly defined limits of time and space. In the annals of international organizations there had marched an uninterrupted procession of temporary agencies, each established to solve what was essentially a long-term problem. Not only were these agencies conceived with specific limitations as to duration, but each had jurisdiction of only a specific part of the world's refugees. Although the agencies were diversified in their international apparatus, the international organizations dealing with refugees have remained essentially within this format and as a result thereof, differences

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<sup>49</sup> (Continued) with the purposes and principles of the Charter of the UN shall be: the repatriation; the identification, registration and classification; the care and assistance; the legal and political protection; the transport; and the resettlement and re-establishment . . . ."

<sup>50</sup> Refugees as a term within the Constitution of the International Refugee Organization is divided into four parts. Part I, Sec. A, para. 1 provides that the term applies to a person who has left, or



[illegible]

10 (Continued) With the exception of the following, the information in this report is confidential and should be handled as such:



has been in degree rather than in kind.

The International Refugee Organization was one of the early attempts to test, the use of the "specialized agency" device.<sup>51</sup> This was essentially

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<sup>50</sup> (Continued) who is outside of, his country of nationality or of former habitual residence, and who, whether or not he has retained his nationality belongs to one of four categories:

(a) victims of Nazi or Fascist regimes or of the other regimes which took part on their side in the Second World War whether enjoying international status as refugees or not.

(b) Spanish Republicans and other victims of the Falangist regime in Spain whether enjoying international status as refugees or not.

(c) persons who were considered a refugee before the outbreak of the Second World War.

Para. 2 provides that the term refugee also applies to a person who is outside of his country of nationality or former habitual residence and who as a result of events subsequent to the outbreak of the Second World War is unable or unwilling to avail himself of the protection of the government of his country of nationality.

Para. 3 provides that the term refugee shall also apply to persons of Jewish origin as well as to foreigners and stateless persons who were victims of Nazi persecution and were detained in or who were obliged to flee from Germany or Austria, and who were subsequently returned to one of those countries.

Para. 4 provides that the term refugee applies to unaccompanied children who are war orphans or whose parents have disappeared, and who are outside their country of origin. Supra note 49.

<sup>51</sup>See U. N. Charter arts. 55, 57, and 58.

[illegible]

an effort to overcome political differences and hostilities among the members. The League of Nations had attempted to avoid criticism from member states by the establishment of the League's High Commissioner. Similarly, the International Refugee Organization was placed on the periphery of the United Nations system. Under its constitution, the International Refugee Organization was expressly permitted to have a selective membership policy. The General Assembly reasoned that such policy would enable it to operate without those members who were openly hostile to the purposes associated with its establishment.<sup>52</sup> However, when the operation of the International Refugee Organization was coming to an end in 1951, there had not been any substantial reduction of the world refugee problem.

The first substantial departure from the International Refugee Organization approach was initiated by the Arab-Israel conflict. The General Assembly on 1 August 1948, unanimously voted against the inclusion of either Arab or Jewish Middle Eastern refugees under the jurisdiction of the International

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<sup>52</sup>International Refugee Organization Const. art 4 supra note 49.



in order to ensure that the information is not  
misused in any way. The issue of privacy  
and security is a very sensitive one and it  
is the responsibility of the Government to ensure  
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Refugee Organization. The reason ascribed therefor was that the essentially non-political and humanitarian character of the organization would be altered by any involvement in a major political conflict.<sup>53</sup> This argument advances, of course, the corollary that any response to such situation must remain on a national plane.<sup>54</sup> Similarly the Korean War, which commenced in 1950, was without the aegis of the International Refugee Organization, even though there were approximately seven million civilian<sup>55</sup> refugees who left North Korea for South Korea.<sup>56</sup> It has been estimated that at the end of the existence of the International Refugee Organization there were over 30 million refugees in the world.<sup>57</sup> While it may be stated that the Organization had fulfilled many tasks,

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<sup>53</sup>Stoessinger, supra note 21, at 98.

<sup>54</sup>United Nations Relief and Works Agency for Palestine Refugees in the Near East. See U. N. Doc. Seventh Session of General Assembly, No. 13 (A2127) 301-08 (1952).

<sup>55</sup>N.Y. Times, May 13, 1951, p. 1, col. 4.

<sup>56</sup>U. N. Doc. No. 19 (A/2222) Gen. Ass. Off. Rec. 7th Sess. 1.

<sup>57</sup>Rees, The Refugee and the United Nations, International Conciliation June 1953.



nevertheless the failure to overcome the problem of the refugee returned the crisis to the crossroads of International Law. The International Refugee Organization could not justify an avoidance of the time limitation incorporated in its charter.

### C. THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

On December 14, 1950, by resolution,<sup>58</sup> the General Assembly established the Office of the United Nations High Commissioner for Refugees. It was the hope of the Assembly that member states would, once more, find it convenient to cooperate with a High Commissioner. In other words, there might be less friction if the nations could deal with an international civil servant. A statute<sup>59</sup> set forth the limits of the authority of the High Commissioner.<sup>60</sup> He would act under the authority of the General Assembly. The primary function assigned to the office was to provide international protection to refugees. It was recognized that if this effort

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<sup>58</sup>U. N. Doc. HCR/INF 48, 4 (1950).

<sup>59</sup>U. N. Doc. HCR/INF, Annex 1 (1950).

<sup>60</sup>Stoessinger, supra note 21, at 90.





were to succeed the agency would have to possess a non-political character. In an effort to universalize the foundation upon which the High Commissioner would stand, the fact of non-membership in the United Nations would not be a consideration in the Economic and Social Council's selection of the membership of an advisory group to assist the High Commissioner. This attempt at universality was an effort to offset the weakness of the International Refugee Organization which had been composed of nations of only the non-communist bloc.<sup>61</sup> In addition, rather than a specific time limit, at the end of three years, there would be a review to determine whether the office of the High Commissioner should be continued.

The High Commissioner's duties were expressly set forth in the Statute of the Office of the United Nations High Commissioner for Refugees. In the afore-said statute, the General Assembly elected to recognize groups and specific categories of refugees and placed within the jurisdiction of the High Commissioner the following:

6A (i) any person who had been considered a refugee under [certain previous international conventions and agreements].

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<sup>61</sup>Statute of the Office of the United Nations High Commissioner For Refugees. General Assembly Resolution 428 (V) of 14 December 1950.



(ii) (6) Any person, who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.<sup>62</sup>

Thus, refugees who had been, by definition, within the confines of previous international treaties were treated as proper subjects of the new High Commissioner. The addition of a new liberal concept of the "pre-1951 events" refugee was of more importance.

#### D. CONVENTION RELATING TO THE STATUS OF REFUGEES

With the above organizational task completed and the concept of the single administrator a working reality, twenty six nations the following year agreed to a Draft of a Convention Relating to the Status of Refugees.<sup>63</sup> The Convention paralleled in part the definition of refugees who were placed within the jurisdiction of the High Commissioner. The

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<sup>62</sup>Ibid.

<sup>63</sup>U. N. Doc. HCR/INF 48 3 (1950).







Convention continued recognition of all of the former internationally recognized classes or groups of refugees. The second category of refugees recognized by the Convention were those refugees of the "pre-1951 events" who had been placed within the jurisdiction of the Office of the High Commissioner. On 28 July 1951, the Convention came into being.<sup>64</sup>

Both the Statute and the 1951 Convention are logical projections of the expanding refugee concept accepted by the legislators of the international community. For a refugee to be an international refugee he must not be in the country of his nationality or in a country in which he has strong contacts by reason of lengthy residence.

A problem associated with nationality is the question of statelessness. Whereas the person possessing nationality or citizenship must sever his contacts with the country of citizenship, there are those who have no citizenship. The problem of statelessness has therefor continued to be of critical importance. When is a person stateless and when does he possess nationality? It is foreseeable that in

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<sup>64</sup> 189 U. N. T. S. 137 (1951). It is to be noted that there are minor differences between the statute and the 1951 Convention. The main difference is that the Convention includes the phrase "membership of a

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With the passage of the Civil Liberties Act of 1966, the government has taken steps to ensure that the rights of all citizens are protected. This includes the establishment of the National Archives and Records Administration, which is responsible for preserving the records of the federal government. The act also provides for the release of certain records to the public, ensuring transparency and accountability in government operations.

the case of a person possessing a certain nationality, the country of his former habitual residence need not correspond with the country of his nationality.

Of assistance here, are the provisions of Article I of the International Convention on Certain Questions relating to the Conflicts of Nationality Laws, which was adopted at the Hague on 12 April 1930.<sup>65</sup> Article I acknowledges that it is for each state to determine, under its own law, who is to be a national of the state. The Convention<sup>66</sup> acknowledges that this principle shall be recognized by other states in so far as it is consistent with other international conventions, international customs and the principles of law generally recognized as relating to nationality. Article II<sup>67</sup> of the aforesaid Convention sets forth an additional rule which is worthy of inquiry. Article II states that

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<sup>64</sup> (Continued) particular social group" as an additional ground to bottom the fear of persecution criteria; and in addition thereto, the Statute provision that the failure to seek protection of the country of his nationality may be for "reasons other than personal convenience" is not included in the Convention.

<sup>65</sup> 179 L. N. T. S. 29 (1930).

<sup>66</sup> Id.

<sup>67</sup> Id.



[illegible]

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is active in the United States or whether it is merely a propaganda organization. The Commission is therefore unable to determine whether the CLA is active in the United States or whether it is merely a propaganda organization.



that any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State of which the nationality is claimed.

The aforesaid nationality provisions may be considered no more than codification of generally accepted rules of international law. Thus, there is a certain framework, within which, the determination of nationality or lack thereof is to be made. A person applying for refugee status is processed initially in accordance with municipal law. It is, of course, realistic to assume that in the case of a person who claims the nationality of "X" country and alleges that fear of persecution is responsible for his movement, it is not feasible nor wise to apply to the authorities of "X" country to determine the national status of the applicant. As a matter of fact-finding, it is necessary for the international agency to examine the laws and regulations of the refugee's state of origin, published decisions of the authorities of such state, and to look to whatever documents or travel papers that a claimant may possess. This, therefore, may be termed as an international construction of municipal law. In such

[illegible]

circumstances the inherent problems associated with this determination may and ought to be resolved in favor of the person seeking refugee status.

The term "country of former habitual residence" in the 1951 Convention was conceived by the drafters to be no more than a practical substitute for the term "country of nationality" in those cases wherein the latter concept would be inappropriate. The term "country of former habitual residence" is defined as the country in which a person had resided and where he had suffered or fears he would suffer persecution if he returned thereto.<sup>68</sup> It is not necessary that the refugee be a domiciliary of such former country of residence but in lieu thereof, there must be a residence of some standing or duration.

As has been the traditional case,<sup>69</sup> a refugee must be outside the country of his nationality. However, in the 1951 Convention there is a time limitation which should be examined. The Convention refers to being outside the country of nationality "as a result of events occurring before 1 January 1951."

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<sup>68</sup>U. N. Doc. E/AC 32/5 (E/1618) 39.

<sup>69</sup>Supra note 50.

[illegible]



The drafters of the term intended that the word "events" be construed as "happenings" of major importance involving territorial or profound political changes as well as systematic programs of persecution which are the after-effects of earlier changes.<sup>70</sup> Criticism leveled at the aforesaid definition suggests that a more compatible construction which would be less restrictive is: "events are happenings which create conditions under which a group of persons become victims of racial, religious, national, social or political persecution."<sup>71</sup> The latter would apply to a case of a government which begins persecution although no profound political changes have occurred. Of additional importance is the express language of the Convention which, while it requires the "events" to occur before 1951, does not exclude from international refugee status persons who become refugees at a date subsequent thereto as a result of events before 1951, or as a result of the after-effects of such events which may in fact be subsequent to the cut-off date.<sup>72</sup> In this regard there

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<sup>70</sup>U. N. Doc. E/AC 32/5 (E/1618) 33.

<sup>71</sup>Robinson, Convention Relating to the Status of Refugees 35 (1953).

<sup>72</sup>U. N. Doc. E/AC 32/5 (E1618) 39; Cf. Robinson, supra note 71, at 46 et seq.

[illegible]

are a number of governments which have declared that they consider the Hungarians who departed Hungary during or after 1956 uprising, to be within the scope of the Refugee Convention. In other words, such constructions find that the "uprising" within Hungary was an after-effect of events which had taken place prior to 1951.<sup>73</sup> The date 1 January 1951, is the date on which the Office of the U.N. High Commissioner for Refugees came into existence.<sup>74</sup> This date was incorporated into the convention to alleviate any reservations a State might have had toward undertaking obligations toward refugees, the origin and number of which were unknown.<sup>75</sup>

In October 1967, there came into force a Protocol Relating to the Status of Refugees.<sup>76</sup> The purpose of the protocol was to legally acknowledge that there were events subsequent to the 1951 date which had created new refugee situations in the world. While

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<sup>73</sup> Cf. U. N. Doc. A/AC 79/53; U. N. Doc. A/AC 79/PSC/5, 23.

<sup>74</sup> Robinson supra note 71, at 52.

<sup>75</sup> U. N. Doc. E/AC 32/5 (E1618) 38.

<sup>76</sup> U. N. Doc. General Assembly Official Records: Twenty-Second Session Supplement No. 11 (A6711) 6 (1967).



[illegible][illegible]



at first reading there seems to be little advancement toward effective control of the events which produce the refugees, there is nevertheless an improvement of the international recognition of the problem. The Protocol amends certain sections of the 1951 Convention. In particular, the condition precedent clause of "events occurring before 1 January 1951" has been eliminated and no further cut-off date has been included in lieu thereof. The practical effects of the foregoing amendment is to allow consideration of the eligibility of refugees regardless of the date of the events which are found to be the causative factors. This latest action of the international community is important for two reasons. First, it evidences a desire to remove artificial restrictions and inhibitions to actions which are otherwise required in the international forum. The second reason is that the implications relating to the current refugee situations prevalent in the world. A considerable part of the foregoing trek through the history of the international refugee situation has been devoted to the nuances of the definitional recognition of the refugee. Each definition found in important international legal documents is, more often than not,



a compromise between competing considerations of international action and national action. This will be considered below, but before such consideration, it is wise to introduce, to our discussion, the problems of the refugee in the modern era.





## CHAPTER IV

### THE PRESENT REFUGEE

The formulation and growth of international law in response to the problem of refugees has been ambivalent toward humanitarian considerations. This allegation, however, must be examined in the light of present world conditions. For the purposes of our inquiry, the exploration shall devolve from the general consideration of who has been considered a refugee in international law to who ought to be considered an international refugee. The selection of the present conflict in South East Asia with the attendant is proper to examine the current refugee. In Viet Nam the world community is witness to an overt conflict which is not limited to one nation, or political subdivision thereof, actively engaged to the exclusion of any other nation. The conflict would be national in character if there were but one nation engaged.

In a national conflict, the responsibility of any other nation to any refugees produced by such conflict is governed by the 1951 Convention. The

## CHAPTER IV

### THE POLITICAL SITUATION

The situation in the world of international law is changing. In the past it was a world of peace and order, but now it is a world of conflict and disorder. This is due to the fact that the world is becoming more and more divided into two camps, the East and the West. The East is led by the Soviet Union, and the West is led by the United States. The two camps are in a constant state of tension, and this tension is the cause of the world's problems. The world is also becoming more and more divided into two groups, the rich and the poor. The rich are becoming richer, and the poor are becoming poorer. This is also due to the fact that the world is becoming more and more divided into two camps, the East and the West. The two camps are in a constant state of tension, and this tension is the cause of the world's problems. The world is also becoming more and more divided into two groups, the rich and the poor. The rich are becoming richer, and the poor are becoming poorer. This is also due to the fact that the world is becoming more and more divided into two camps, the East and the West. The two camps are in a constant state of tension, and this tension is the cause of the world's problems.

In a national conflict, the responsibility of the government is to maintain the peace and order of the country. The government is also responsible for the welfare of its citizens. The government is also responsible for the defense of the country. The government is also responsible for the education of its citizens. The government is also responsible for the health of its citizens. The government is also responsible for the environment of the country. The government is also responsible for the culture of the country. The government is also responsible for the economy of the country. The government is also responsible for the society of the country. The government is also responsible for the politics of the country. The government is also responsible for the law of the country. The government is also responsible for the justice of the country. The government is also responsible for the freedom of the country. The government is also responsible for the equality of the country. The government is also responsible for the dignity of the country. The government is also responsible for the respect of the country. The government is also responsible for the honor of the country. The government is also responsible for the glory of the country. The government is also responsible for the power of the country. The government is also responsible for the wealth of the country. The government is also responsible for the strength of the country. The government is also responsible for the influence of the country. The government is also responsible for the prestige of the country. The government is also responsible for the reputation of the country. The government is also responsible for the fame of the country. The government is also responsible for the honor of the country. The government is also responsible for the glory of the country. The government is also responsible for the power of the country. The government is also responsible for the wealth of the country. The government is also responsible for the strength of the country. The government is also responsible for the influence of the country. The government is also responsible for the prestige of the country. The government is also responsible for the reputation of the country. The government is also responsible for the fame of the country.

international responsibilities commence only when the refugee departs the national boundaries of the state in which the conflict occurs. A consideration of the converse situation is necessary to properly evaluate the plight of the current refugee. By the converse situation is meant that the refugee is unable to leave his nation and the character of the hostilities is international. If such be a supportable hypothesis, then the question suggested is whether the refugees, if there be such, are responsibilities of the participants to the conflict only, or if they are also responsibilities of the international community.<sup>77</sup>

Both North and South Viet Nam are presently involved in a conflict which may be referred to as an unconventional war. Such conflict is limited to a certain geographical area which is clearly defined for purposes of military action. For a meaningful consideration of the present situation a brief background of the events which caused the refugee problem is necessary. The refugee problem which precipitated

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<sup>77</sup>S. Rep. No. 1058, 89th Congress 2d Sess. 1 (1966). It is therein stated that the mounting refugee problems in Viet Nam has been noted and it is urged that adequate assistance be forthcoming from the international community.

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that the refugee, it says in fact, the responsi-  
bility of the individual of the conflict is who  
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individual is individual. It such is a response  
like to form the nation and the character of the  
national situation is seen that the refugee is no  
negative one of the national situation. It is  
state in that the conflict occurs. A consequence  
the national situation is necessary to identify  
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world concern reached critical size in 1954 as a result of certain provisions of the Geneva Accords of 1954.<sup>78</sup> This date is relevant because nearly one million refugees, in a relatively short period of time, departed the Democratic Republic of Viet Nam, and crossed the 17th parallel into the Republic of Viet Nam.<sup>79</sup>

Was this refugee population a proper consideration of the U.N. High Commissioner for Refugees? Were these refugees considered within the scope of any international treaty relevant to the refugee? It is essential to consider the 1951 Convention as applied to the Viet Nam hostilities. The 1951 Convention provides that "as a result of events occurring before 1 January 1951." Were the events in Viet Nam which caused the large migration of refugees prior to the cut-off date?

A brief history of Viet Nam at this point is

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<sup>78</sup>The 1954 Geneva Accords, American Foreign Policy, 1950-1955: Basic Documents, Vol. 1. 750-88 (1957). Art. 14(d) provided for a 300 day period of unfettered migration of civilians from one territory to the other.

<sup>79</sup>According to the Fourth Interim Report of the I. C. C. there were 892,876 refugees who migrated from the North to the South and only 4269 refugees who moved from the South to the North under the provisions of article 14(d). Fourth Interim Report of

While neither country retained this in 1988 nor in  
 1991 or 1992, the number of the latter country of  
 1988. The data is consistent with the fact that  
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 and indeed the year revealed that the number of  
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 The data suggests production a proper consideration  
 also of the U.S. 1988 Commission has suggested  
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The 1988 Commission, however, reveals that the  
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appropriate. Following the Second World War, and pursuant to the Potsdam Agreements of 1945, Viet Nam was divided for military purposes. In the northern sector, the Democratic Republic of Viet Nam under Ho Chi Minh became entrenched; and subsequently proclaimed that it alone represented all of Viet Nam. In the southern section the French government claimed that it was the only sovereign power in Viet Nam.<sup>80</sup> In June 1948, the independence of the State of Viet Nam was recognized within the French Union of Nations. Thus, there were two governments competing for essentially the same territory. Each Governmental power structure had control of a specified area within discernible territorial limits. This fact was recognized in 1954 by the nations participating at the Geneva Conference. Both the Democratic Republic of Viet Nam and the Republic of Viet Nam were represented at the 1954 Geneva Conference. Their existence for our purposes commenced with the realities of the situation as it existed subsequent to 1945. It is

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<sup>79</sup> (Continued) the International Commission for Supervision and Control in Viet Nam (Viet Nam No. 3 1955, Command Paper 9654. Great Britain Parliamentary Sessional Papers XLV (1955) 30.

<sup>80</sup> Murti, Viet Nam Divided 171 (1964).



[illegible]



unnecessary for us to delve further into the situation as it may have been before 1945, since our purpose is only to submit evidence that the events causing the refugee problem occurred prior to 1951. It is unnecessary to characterize the events as long as such events are compatible with the accepted definition. Happenings of major importance which involve territorial changes is suggested by the drafters of the 1951 Convention as the definition of "events."

Assuming therefore that the events prior to 1951 produced refugees, one is presented with the question of whether the refugee "movement" of 1954 was owing to a well-founded fear of being persecuted. This determination is necessarily a subjective test.

This inquiry may commence with the objective findings relating to the refugee movement subsequent to the 1954 Geneva Accords. During the free-travel period nearly seven percent of the population of the Democratic Republic of Viet Nam, some one million people, crossed the division line into the Republic of Viet Nam. The refugees, mostly peasants, it has been stated, fled largely for political reasons.<sup>81</sup>

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<sup>81</sup>S. Rep. No. 1058, supra note 77, at 12.

1. The Commission has been established to examine the situation of the Jews in Poland and to make recommendations to the Government and the public.

2. The Commission is composed of representatives of the Government, the Jewish community, and the public.

3. The Commission has the honor to inform you that it has been established and is now beginning its work.

4. The Commission is composed of the following members:

5. The Commission is now beginning its work and will report to the Government and the public in the near future.

6. The Commission is now beginning its work and will report to the Government and the public in the near future.

7. The Commission is now beginning its work and will report to the Government and the public in the near future.

8. The Commission is now beginning its work and will report to the Government and the public in the near future.

9. The Commission is now beginning its work and will report to the Government and the public in the near future.

10. The Commission is now beginning its work and will report to the Government and the public in the near future.

We may infer from such objective evidence that the causes of such a large movement of people in such a short period of time would support a finding of "fear" as the motivating factor, especially when we realize that the composition of the refugee group involved was comprised mainly of the peasant class. The peasant class has throughout history been tied to the land. Such movement also has been characterized as a compulsory movement of the people as a result of mainly political reasons.<sup>82</sup>

The third test under the Convention to be met by any refugee group is that such refugee must be "outside the country of his nationality." This initial inquiry is limited to the one million refugees who migrated subsequent to the 1954 Geneva Accords. We shall refer to the classical definition of a state under international law to determine whether or not such refugee may establish entitlements. There are four factors essential to any definition of a state. There ought to be a people, a territory, a government, and a capacity to enter into relations

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<sup>82</sup>Id. at 11.

He has taken into account the fact that the  
movement of the people is not  
a mere question of the number of people in  
the country, but also of the quality of the  
people. He has also taken into account the fact  
that the people are not homogeneous, but  
diverse. He has also taken into account the  
fact that the people are not static, but  
dynamic. He has also taken into account the  
fact that the people are not isolated, but  
interconnected. He has also taken into  
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people are not isolated, but interconnected.

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with other states.<sup>83</sup> The Republic of Viet Nam has a population of fifteen million people;<sup>84</sup> it administers a territory south of the 17th parallel of approximately 66,000 square miles;<sup>85</sup> and has been repeatedly recognized internationally as having capacity to enter into relations with other nations.<sup>86</sup> The Republic of Viet Nam is, therefore, a state within the classical definition. The refugees who were compelled to depart the Democratic Republic of Viet Nam entered a state which was outside the country of their nationality. While not necessary for our present purposes, a similar case may be advanced for those refugees who departed the Republic of Viet Nam for the Democratic Republic of Viet Nam.

Was the High Commissioner for Refugees involved in the foregoing situation? No. There was no jurisdiction sought, although, it was apparent that the Government of the Republic of Viet Nam was not prepared

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<sup>83</sup> Briggs, *The Law of Nations* 69-71 (2d ed. 1952).

<sup>84</sup> See Dept. of State Publ. 7473, *Far Eastern Series* 118 (1963).

<sup>85</sup> *Id.*

<sup>86</sup> See *Legal Status of South Viet Nam*, U. S. Dept. State Publ. 4/31b-8658T.

[illegible][illegible]

to handle the flood of refugees.<sup>87</sup> Although the refugee crisis associated with this movement was in the long run dissipated,<sup>88</sup> the need for international action was in no way diminished. The initial refugee crisis was a mere portend of the refugee problem concomitant to the present hostilities occurring in the Republic of Viet Nam. As the warfare in Viet Nam gained momentum, an increasing number of civilians were unable to avoid direct involvement in the battles. Their homes were in the midst of the battlefields. Nevertheless, it is difficult to determine what, if any, assistance was rendered to them in the early stages of the conflict. It may be, as has elsewhere been stated, that such refugees were ignored.<sup>89</sup>

Now, while one may argue that the refugee group associated with the post-Geneva Accord movement was within the provisions of the 1951 Convention and within the jurisdiction of the High Commissioner, it is certain that the battlefield refugees were not

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<sup>87</sup>H. R. Rep. No. 1769, 89th Cong., 2d Sess. 3 (1966).

<sup>88</sup>Id.

<sup>89</sup>S. Rep. No. 1038, supra note 81, at 11.





entitled to any international assistance or protection. These refugees were within the confines of their own state. They did not qualify for assistance under any international agreement. The cause of their compulsory movement was war. They sought assistance and safety. It is to be noted that these refugees were from the peasant class and could not reasonably be expected to depart the Republic of Viet Nam. The mechanisms established by international law and international agreements were not to be involved. There was only the traditional international approach that the problem of the Viet Nam conflict was a problem of purely municipal or domestic concern. It remains to establish the nature, and extent of the refugee situation so as to determine the refugee needs, if any, to be satisfied.

In the year 1965, the number of refugees increased at a rate commensurate with the growth of the war. In the early months of that year the number of refugees was estimated to be approximately 200,000 people. By mid-1965, the number of refugees had swollen to nearly 400,000. By September it had reached 600,000 and to nearly a million by the end of the year.<sup>90</sup> An important facet of these statistics

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<sup>90</sup>Id. at 12.

[illegible]

is that the above data does not disclose the composition of the refugees involved. Most of the refugees are children under sixteen, women and older persons. There are few able-bodied men between 16 and 40 years of age.<sup>91</sup> While the available statistics point out the alarming proportions of the ratio of refugees to total civilian population, it is nevertheless essential to consider what aid the refugees are receiving to determine if there is a need for international assistance.

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<sup>91</sup>Id.





## CHAPTER V

### THE INTERNATIONAL REFUGEE

#### A. AN INTERNATIONAL CONFLICT

Since the United States of America is firmly committed to direct military participation in the present conflict, it is relevant to determine the assistance, which is rendered to the refugees by the United States. A refugee is defined by military dictionary as "A civilian within the national boundaries of his country who by reason of war is either temporarily homeless or involuntarily removed or distant from his home."<sup>92</sup> This definition, it is apparent, relates to the situation existing in Viet Nam. The armed forces are subject to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.<sup>93</sup>

It is perhaps wisest to project our inquiry from an examination of the persons protected into the limits of the protection obtained. The provisions

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<sup>92</sup> Army Regs. No. 320-1.

<sup>93</sup> 75 U. N. T. S. 287 (1950).

There is no doubt that the Commission is in a position to make a more complete investigation of the situation in the various countries and to make a more complete report on the situation in the various countries.

of the 1949 Geneva Convention applies to all armed conflicts which may arise between parties to the convention whether war has been declared or not, and even if one of the participants refuses to recognize a state of war. With regard to the Convention provisions, the International Committee of the Red Cross "[a]larmed by the increasing internationalization of the [Viet Nam] conflict and the constant extension of hostilities, the [Red Cross] launched an appeal on June 11, 1965 to all belligerents requesting them to take necessary measures with a view to ensuring the full application of the Geneva Conventions."<sup>94</sup> The Republic of Vietnam and the United States of America declared that they agreed to apply the Geneva Conventions as a whole.<sup>95</sup> Without disputing the application thereof, the Ministry for Foreign Affairs of the Democratic Republic of Viet Nam, in its reply of August 31, 1965, restricted itself to protesting against the bombing of its territory.<sup>96</sup> The National

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<sup>94</sup>Comite International de la Croix-Rouge, Information note Fr 944 b 1 (Geneva 12 Aug 1966).

<sup>95</sup>Id.

<sup>96</sup>See International Review of the Red Cross (Oct 1965).





Liberation Front [Viet Cong] informed the International Committee of the Red Cross in October 1965, that since it did not participate in the Geneva Conventions and therefore did not consider itself bound by them. Australia and New Zealand which also have military forces involved have recognized the application of the Geneva Conventions. Thus, even from the above declarations of some of the participants of the conflict it may be seen that the conflict has international character. In any event, persons who are protected by the convention, are those civilians who, "at a given moment and in any manner whatsoever," find themselves in the event of a conflict or occupation in the hands of a party to the conflict or occupying power of which they are not nationals. Protection is predicated on the individual being captured by and subject to the control of a foreign enemy power. Thus, there is Convention protection only when the individual is without the protection of his own state. Article 13 of the Convention provides for the protection of the entire populations of the belligerents without any adverse distinction based, in particular, on race, nationality, religion or political opinion. These provisions relate only indirectly to our refugee problem. The tenor of this

Individuality is the religious principle. The source of this  
of political opinion. These principles are not only  
based, in themselves, on race, nationality, religion  
of the religious system and are abstract expressions  
which for the foundation of the State's political  
of the two states. Article 11 of the Convention for  
only now the individual is within the protection  
every power. Thus, there is Christian civilization  
superior to and subject to the control of a Europe  
Protection is restricted to the individual State  
concerned none of which they are not nationalities  
then in the hands of a party to the conflict or  
find themselves in the event of a conflict in uncer-  
tain a given moment and in any manner whatsoever.  
treated by the Convention, the other civilians who  
should protect. In any event, persons who are not  
likely it may be seen that the conflict has become  
voluntarily of some of the participants of the con-  
the many Conventions. Thus, from this alone  
power derived have constituted the conflict as  
nationalities and the States which also have actively  
therefore did not consider itself bound by them.  
to the two participants in the Geneva Conventions and  
Convention of the Red Cross is likewise 1864, that since

Convention is the protection of the national when he finds himself in another state's power. The refugee in Viet Nam is more often than not fleeing only from the battlefield. He is a concern of the military forces engaged in the hostilities. He, however, must at all times, remain secondary in importance to the military mission. There is little argument against this assignment of values. The military forces participating in the Republic of Viet Nam, especially those of the United States, engage of course in programs of assistance but those programs are not geared to a proper solution of the problem. The government of the Republic of Viet Nam is not presently in a position to provide for the essential welfare of the refugees.

#### B. HUMAN RIGHTS

Another consideration is the Universal Declaration of Human Rights.<sup>97</sup> Therein, it is stated that certain human rights are to secure by progressive measures, national and international, universal and effective recognition as well as observance. The substantive aspects set forth in this

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<sup>97</sup> See Yearbook of Human Rights for 1948 (1950) 469-79; U. N. Doc. No. A/810 Gen. Ass. Off. Rec., 3d Sess. (I) 71.



[illegible]



Declaration clearly apply to the situation in Viet Nam. The thrust of the provisions of the Declaration is to secure to every individual certain rights. It may be argued that these rights are primarily the concern of the municipal government. In the context of the refugee situation the right to security of person and the right to own property acquire special significance. It is these rights that our modern refugee desires. No longer is the travel document the measure of the international assistance. The Declaration, however, is the frontier of our refugee assistance.

Declaration clearly right in the situation is that  
the, the treaty of the provisions of the Convention  
is no more as every individual certain person.  
It may be argued that these rights are clearly  
the essence of the medical profession, in the con-  
text of the subject situation the right to security  
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that situation. It is these rights that are  
before the law, to be kept in the present  
context the status of the international situation.  
The Declaration, however, is the frontier of our  
subject situation.

## CHAPTER VI

### CONCLUSION

There has been an exhaustive and extensive analysis of the refugee in war related and non-war situations. The refugees of the Russian internal conflict needed certain legal rights. Their plight necessarily was the subject of international law but only because the conscience of man had been pricked. Their status was defined and their most pressing needs were looked after by an international agency. Within the confines of the various definitions, there are certain well-defined limits, in which international law in the person of treaties, has established trends and value. There was a need to be filled which was not being met by the states of the world. Early in this century, the possession of identity or travel papers were of prime concern to the refugee. There was, however, a vacuum and it was into this vacuum that international law proceeded. The nature of the problems of the refugee remained fairly constant up to and including the Second World War. The primary justification for international action





through international law was the crossing of a state's border by a refugee who was escaping from some sort of battlefield. The battlefield may have been similar to the situation existing in Viet Nam or it could have been of lesser danger to life. In any event there was the seeking of refuge away from this battlefield. The refugees were compelled to depart their homeland.

Always constant, however, in the application of international law was the inclusion of the condition that the refugee not be within his country. For refugee situations found in the early part of this century this condition may have been valid. The wars of circumstances creating the refugees were not international in character. The absence of efforts in international law during the Second World War was due to the military exigencies and may be set aside from our consideration. The military definition of a refugee set forth in the previous chapter is more in accord with the realities of the situation of war. The Second World War was international in character and the refugees which were created as a result thereof were the responsibility of the military forces without regard to national

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frontiers. The post-war period and the re-creation of the international refugee agencies continued the evolution of international rules that were humanitarian in nature. Nevertheless it may be inferred that world political conflicts may hinder the established goals of international refugee assistance.

The early struggle, however, resulted into the creation of the concept of an agency which was primarily concerned with efforts on behalf of refugees. The High Commissioner has been respected on the international scale. Korea and its limited conflict also established the necessity of international assistance to the refugee. Is there a principle to be derived from these two facts? The concept of an international officer who is concerned only with refugees is desirable. Such international officer can avoid many of the disadvantages associated with the other methods of assisting the refugee. Certainly the High Commissioner could deal more effectively with the refugee problems than a specialized agency. Certainly there is nothing per se wrong with such specialized agency. The inherent difficulty associated with such an effort, however, is that if the life and character of the agency is fixed to the problem it does not command

[illegible]



the proper respect from the competing forces engaged in a conflict similar to Viet Nam.

Viet Nam is the country in which the body of our refugee law is on trial. It is here that creative forces must be used to establish the proper remedies. If the U.N. High Commissioner for refugees is the answer, then efforts must be made to promptly enlarge the jurisdiction and the duties thereof.

Viet Nam is the battlefield of an international conflict. There are several nations which have assumed the status of belligerents therein. Their actions toward people, who are not their nationals, are somewhat guided by the Geneva Convention IV of 1949. For the same reasons that such conflict gives rise to such international obligations, it is contended that when an international war creates refugees, it thereby creates international obligations to the refugees. These refugees are the proper concern of an international agency. If this be true, then the ideal agency to be involved in the problems of refugees in Viet Nam is the High Commissioner for Refugees. His duties should be expanded to respond to the problems associated with the refugees.

A certain latitude may be included within his

the power to make laws for the purpose of promoting the

in a limited number of cases only.

That the law is made in the name of the people of

the United States is a fact which is not in dispute.

It is true that the law is made in the name of the people

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people of the United States, but it is made in the name of the

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powers to ensure that the agency will remain responsive to the needs. Initially, it is recommended that the executive power of the country in which the commissioner desires entrance be allowed a veto power to curtail any and all activities of the agency. This is necessary because of the delicate lines that must be drawn with regard to avoiding any infringement on the sovereignty of the inviting nation. This procedure is suggested as an effort to hasten the clearly discernible trends set forth above. In the absence of this veto, it is suggested that the inexorable march of these measures would nevertheless occur. It is, suffice it to say, expedient to hasten the trend. In reply to those who may suggest that in the creation of this power within the agency, and the inclusion of this category of refugee within the provisions of the Convention of 1951, there is an unwarranted intrusion into domestic matters, it is contended that the responsibility of the Commission endures only as long as the nation concerned is unable to provide for such battlefield refugees.

It would be necessary to set forth certain safety areas for these refugee centers where hostilities or military activities would be prohibited.

1. The first of these is the fact that the United States has a long and distinguished history of support for the United Nations. This support has been expressed in many ways, including the provision of financial aid, the sending of military and civilian personnel, and the participation of American citizens in the work of the organization.

2. The second of these is the fact that the United States has a strong and effective system of government. This system is based on the principles of democracy, freedom, and justice, and it has been the source of many of the achievements of the United States in the world.

3. The third of these is the fact that the United States has a large and powerful economy. This economy is the result of many years of hard work and sacrifice, and it has been the source of many of the achievements of the United States in the world.

4. The fourth of these is the fact that the United States has a strong and effective military. This military is the result of many years of hard work and sacrifice, and it has been the source of many of the achievements of the United States in the world.

5. The fifth of these is the fact that the United States has a strong and effective foreign policy. This policy is based on the principles of democracy, freedom, and justice, and it has been the source of many of the achievements of the United States in the world.



These provisions would be similar to the Safety Zones accorded to the hospitals under the Geneva Convention IV of 1949. No military personnel would be allowed to seek safety therein. These protective zones for civilian refugees, wherein the international community would guarantee certain minimal standards of living through international law, would be enforceable through provisions providing for penalties for any violation. These would be in the nature of war crimes. If these propositions appear novel, an enlightened perspective provides the justification.

A more serious problem is the fact that if only one nation to an international conflict is assisted, then the State is assisted militarily by the release of labor and expenditures for military purposes which would be otherwise employed on behalf of the refugee. The response to such contention is that free zones must be created in the midst of these hostilities, even though the argument may have some merit. The rebuttal thereto is that there are refugees in the Democratic Republic of Viet Nam who would also benefit. The High Commissioner for Refugees would extend his efforts to both sides. A balancing of equities would thereby be achieved and the only benefit would be to the refugee. The High Commissioner for

[illegible]

Refugees ought not exist if he is required to ignore the battlefield refugee of Viet Nam.

THESE ARE THE RESULTS OF THE RESEARCH CONDUCTED BY THE

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